

Jordan L. Lurie (SBN 130013)  
Jordan.Lurie@capstonelawyers.com  
Mark Greenstone (SBN 199606)  
Mark.Greenstone@capstonelawyers.com  
Tarek H. Zohdy (SBN 247775)  
Tarek.Zohdy@capstonelawyers.com  
Cody R. Padgett (SBN 275553)  
Cody.Padgett@capstonelawyers.com  
Capstone Law APC  
1840 Century Park East, Suite 450  
Los Angeles, California 90067  
Telephone: (310) 556-4811  
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Franchesca Ford  
and Isabel Rodriguez

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION

FRANCHESCA FORD, ISABEL  
RODRIGUEZ individually, and on  
behalf of other members of the  
general public similarly situated,

Plaintiffs,

vs.

CEC ENTERTAINMENT, INC.  
D/B/A CHUCK E. CHEESE'S, a  
Kansas corporation,

Defendant.

Case No.: **'14CV0677 JLS JLB**

**CLASS ACTION COMPLAINT**

- (1) Violation of 15 U.S.C. Section 1681b(b)(2)(A) and 1681d(a) (Fair Credit Reporting Act);
- (2) Violation of California Civil Code Section 1785 *et seq.* (Consumer Credit Reporting Agencies Act); and
- (3) Violation of California Civil Code Section 1786 *et seq.* (Investigative Consumer Reporting Agencies Act).

**Jury Trial Demanded As To Claims  
That Are So Triable**



1 disclosure document is sometimes referred to as a “preauthorization” form.

2 5. Defendant’s preauthorization form is embedded in a multi-page  
3 employment application, and contains a liability release, among other extraneous  
4 information. For these reasons, among others, Defendant’s preauthorization form  
5 violates the law.

6 6. As further alleged herein, Defendant’s violations occurred because  
7 Defendant has failed to properly apprise itself of the statutory mandates before  
8 seeking and acquiring credit and background reports; violated the express and  
9 unambiguous provisions of the relevant statutes; and/or failed to implement  
10 reasonable procedures to assure compliance with statutory mandates.

11 7. As a result of Defendant’s wrongful acts and omissions, Plaintiffs and  
12 other putative class members have been injured, including, without limitation,  
13 having their privacy and statutory rights invaded in violation of the FCRA,  
14 CCRAA and ICRAA.

15 8. Plaintiffs seek on behalf of themselves and putative class members,  
16 statutory, actual and/or compensatory damages, punitive damages, and equitable  
17 relief, including costs and expenses of litigation including attorney’s fees, and  
18 appropriate injunctive relief requiring Defendant to comply with its legal  
19 obligations, as well as additional and further relief that may be appropriate.  
20 Plaintiffs reserve the right to amend this Complaint to add additional relief as  
21 permitted under applicable law.

## 22 JURISDICTION AND VENUE

23 9. The FCRA, codified as 15 U.S.C. Section 1681 *et seq.*, authorizes  
24 Court actions by private parties to recover damages for failure to comply with its  
25 provisions. Jurisdiction over Plaintiffs’ FCRA claims is based upon 15 U.S.C.  
26 Section 1681p and 28 U.S.C. Section 1331.

27 10. Under 28 U.S.C. Section 1367, this Court has supplemental  
28 jurisdiction over Plaintiffs’ state law claims because the state claims are so related

1 to the FCRA claims that they form part of the same case or controversy.  
2 Additionally, jurisdiction over Plaintiffs' state law claims is based upon the Class  
3 Action Fairness Act of 2005, codified as 28 U.S.C. Section 1332(d)(2)(A),  
4 because the amount in controversy exceeds five million dollars (\$5,000,000),  
5 exclusive of interest and costs, and because the parties are diverse because  
6 Plaintiffs are residents of California and Defendant is a Kansas corporation with  
7 its principal place of business in Texas.

8 11. Venue lies within this judicial district pursuant to 28 U.S.C. Section  
9 1391(b) and (c) because Defendant transacts business in this judicial district and  
10 because this District is a District in which a substantial part of the events or  
11 omissions giving rise to the Complaint occurred. Specifically, Plaintiff  
12 RODRIGUEZ completed Defendant's employment application in National City,  
13 California, County of San Diego. Venue is proper in the Southern District of  
14 California.

### 15 THE PARTIES

16 12. Plaintiff FRANCESCA FORD is a resident of Sacramento,  
17 California, in Sacramento County.

18 13. Plaintiff ISABEL RODRIGUEZ is a resident of San Diego,  
19 California, in San Diego County.

20 14. Defendant CEC ENTERTAINMENT, INC. D/B/A CHUCK E.  
21 CHEESE'S was and is, upon information and belief, a Kansas corporation with its  
22 principal place of business and corporate headquarters in Irving, Texas, and was,  
23 at all times relevant to this complaint, engaged in commercial transactions  
24 throughout this county, the State of California and the various states of the United  
25 States of America.

### 26 PLAINTIFFS' FACTS

27 15. Plaintiff FORD applied for a job with Defendant by completing a  
28 "Cast Member/Call Center Application for Employment" on or about July 30,

1 2012.

2 16. Plaintiff RODRIGUEZ applied for a job with Defendant by  
3 completing a “Cast Member/Call Center Application for Employment” on or  
4 about April 5, 2012.

5 17. Plaintiffs allege, on information and belief, that in evaluating them  
6 for employment, Defendant procured or caused to be prepared credit and  
7 background reports (i.e., a consumer report and/or investigative consumer report,  
8 as defined by 15 U.S.C. Section 1681a(d)(1)(B) and 15 U.S.C. Section 1681a(e),  
9 and a consumer credit report and/or investigative consumer report, as defined by  
10 Cal. Civ. Code Section 1785.3(c) and Cal. Civ. Code Section 1786.2(c)).

11 18. In connection with their employment applications, Plaintiffs  
12 completed Defendant’s standard materials, which, on information and belief, were  
13 used regularly by Defendant for all job applicants during the relevant time period  
14 in the connection with its employment policies, procedures and/or practices.  
15 Defendant’s employment application is a three-page document entitled “Cast  
16 Member/Call Center Application for Employment” that includes an  
17 “Acknowledgment” section on the third and final page of the document. Within  
18 the “Acknowledgment” section is language purportedly disclosing to prospective  
19 applicants, including Plaintiffs and class members, that a credit and/or background  
20 report may be obtained about them in connection with the employment  
21 application. Upon the signing of this “Acknowledgment” section, Plaintiffs and  
22 class members purportedly authorized Defendant to procure a credit and/or  
23 background report.

24 ///

25 ///

26 ///

27 ///

28 ///

19. Below is a reproduction of the portion of the application containing the Acknowledgment:

Have you ever been terminated from employment?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, please explain _____	
May we contact the employers listed in work history section?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If not, indicate which one(s) you do not wish us to contact _____	

References other than relatives: (i.e. school counselor, previous employer, etc)		
Name: <u>Katrina Pool</u>	Relationship: <u>Friend</u>	Phone: <u>303-527-5601</u>
Address: _____		City/State/Zip: _____
Name: <u>Jack Rapp</u>	Relationship: <u>Friend</u>	Phone: <u>303-527-2110</u>
Address: _____		City/State/Zip: _____

#### ACKNOWLEDGEMENT

I certify that all information which I have provided in this Application for Employment is true, correct and complete. I understand that deliberate falsifications or omissions will be grounds for denying or terminating employment with CEC Entertainment, Inc., d/b/a Chuck E. Cheese's, even if the determination is made years later.

I authorize investigation of any and all statements contained in this application for my employment as may be necessary in arriving at an employment decision. CEC Entertainment Inc., d/b/a Chuck E. Cheese's may seek to verify the information provided in this Application for Employment. By signing below, I authorize CEC Entertainment, Inc., d/b/a Chuck E. Cheese's, its parent, subsidiaries, affiliates and of its (their) employees or agents (collectively) referred to as CEC Entertainment, Inc., d/b/a Chuck E. Cheese's to contact the persons, organizations, and personal references that I have listed and to discuss my character, general reputation and general background with them at anytime during the seeking of a position with CEC or at anytime during the course of my employment in accordance with local, state, or federal law.

I also release CEC Entertainment, Inc., d/b/a Chuck E. Cheese's, and all of the persons, organizations and their agents who are contacted by CEC Entertainment, Inc., d/b/a Chuck E. Cheese's for this purpose, from any and all claims, of any kind or nature, which may arise now or in the future from or in any way connected with the process of verifying the information I have provided.

I agree that, if I am employed, I will abide by all the rules and regulations of CEC including the safety rules of CEC. I understand that the pre-employment background check and taking of drug and/or alcohol tests, when given pursuant to company policy and in compliance with state and federal law, are a condition of continued employment and refusal to take such tests when asked will be grounds for my immediate termination. I further understand that nobody at CEC is authorized to enter into any written or verbal employment contracts with me for any definite period of time without the express written consent of the President/CEO of the CEC. I also understand that my employment is "at-will" and may be terminated by myself or by CEC at any time for any reason or no reason at all, consistent with State and federal law with or without prior notice. I further agree and understand that it is my obligation to update and supplement any answers to the questions in this job application in the future, including in the interview process or when I become employed by CEC.

Applicant's Signature: Isabel Rodriguez Date: 4-5-12

# CHUCK E. CHEESE'S®

20. Because this purported disclosure is embedded within an employment application and surrounded by extraneous information, and is not a clear and unambiguous disclosure in a stand-alone document, it does not meet the



requirements under the law. In addition, this purported disclosure contains the following information within its four corners which has nothing to do with the disclosure of the intent to perform a credit or background check:

- (a) I certify that all information which I have provided in this Application for Employment is true, correct and complete. I understand that deliberate falsifications or omissions will be grounds for denying or terminating employment with CEC Entertainment, Inc., d/b/a Chuck E. Cheese's, even if the determination is made years later ("Certification").
- (b) I also release CEC Entertainment, Inc., d/b/a Chuck E. Cheese's, and all of the persons, organizations and their agents who are contacted by ECE Entertainment, Inc., d/b/a Chuck E. Cheese's for this purpose, from any and all claims, of any kind or nature, which may arise now or in the future from or in any way connected with the process of verifying the information I have provided ("Waiver").
- (c) I agree that, if I am employed, I will abide by all the rules and regulations of CEC including the safety rules of CEC. I understand that the pre-employment background check and taking of drug and/or alcohol tests, when given pursuant to company policy and in compliance with state and federal law, are a condition of continued employment and refusal to take such tests when asked will be grounds for my immediate termination. ("Continued Consent").
- (d) I further understand that nobody at CEC is authorized to enter into any written or verbal employment contracts with me for any definite period of time without the express written consent of the President/CEO of the CEC. I also understand that my employment is "at-will" and may be terminated by myself or by CEC at any time for any reason or no reason at all, consistent with State and federal law with or without prior notice. ("Understanding of 'At-Will' Employment").

21. The inclusion of the above Certification, Waiver, Continued Consent and Understanding of "At-Will" Employment provisions in the Acknowledgement violates Section 1681b(b)(2)(A) of the FCRA.

22. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer report<sup>1</sup> or investigative consumer report<sup>2</sup> for employment purposes,

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<sup>1</sup> Section 1681a(d)(1) of the FCRA defines "consumer report" as any oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as

1 unless the disclosure is made in a document that consists *solely* of the disclosure  
 2 and the consumer has authorized, in writing, the procurement of the report. 15  
 3 U.S.C. § 1681b(b)(2)(A)(i)-(ii).

4 23. Although the disclosure and the authorization may be combined in a  
 5 single document, the Federal Trade Commission (“FTC”) has warned that the  
 6 form should not include any extraneous information or be part of another  
 7 document. For example, in response to an inquiry as to whether the disclosure  
 8 may be set forth within an application for employment or whether it must be  
 9 included in a separate document, the FTC stated:

10 The disclosure may not be part of an employment  
 11 application because the language [of 15 U.S.C. §  
 12 1681b(b)(2)(A) is] intended to ensure that it appears  
 13 conspicuously in a document not encumbered by any  
 14 other information. The reason for requiring that the  
 disclosure be in a stand-alone document is to prevent  
 consumers from being distracted by other information  
 side-by-side within the disclosure.

15 24. The plain language of the statute also clearly indicates that the  
 16 inclusion of a liability release in a disclosure form violates the disclosure and  
 17 authorization requirements of the FCRA, because such a form would not consist  
 18 “solely” of the disclosure. In fact, the FTC expressly has warned that the FCRA  
 19 notice may not include extraneous information such as a release. In a 1998  
 20 opinion letter, the FTC stated:

21 [W]e note that your draft disclosure includes a waiver by  
 22 the consumer of his or her rights under the FCRA. The  
 23 inclusion of such a waiver in a disclosure form will  
 24 violate Section 604(b)(2)(A) of the FCRA, which  
 requires that a disclosure consist “solely” of the  
 disclosure that a consumer report may be obtained for  
 employment purposes.

25 a factor in establishing the consumer’s eligibility for employment purposes.  
 26 Section 1681a(e) of the FCRA defines “investigative consumer report” as “a  
 27 consumer report or portion thereof in which information on a consumer’s  
 28 character, general reputation, personal characteristics, or mode of living is  
 obtained through personal interviews with neighbors, friends, or associates of the  
 consumer reported on or with others with whom he is acquainted or who may  
 have knowledge concerning any such items of information.”



1           25. In a report dated July 2011, the FTC reiterated that: “the notice  
2 [under 15 U.S.C. § 1681b(b)(2)(A)] may not include extraneous or contradictory  
3 information, such as a request for a consumer’s waiver of his or her rights under  
4 the FCRA.”

5           26. By including the Certification, Waiver, Continued Consent, and  
6 Understanding of “At-Will” Employment provisions in its Acknowledgement,  
7 Defendant willfully disregarded the FTC’s regulatory guidance and violated  
8 Section 1681b(b)(2)(A) of the FCRA. Additionally, the inclusion of the  
9 extraneous provisions causes the disclosure to fail to be “clear and conspicuous”  
10 and “clear[] and accurate[],” and thus violates Sections 1681b(b)(2)(A) and  
11 1681d(a).

12           27. Defendant’s Acknowledgement also violates Cal. Civ. Code Sections  
13 1785.20.5(a) and 1786.16(b) because it does not contain a check box whereby  
14 applicants may elect to receive a copy of their credit or background report, among  
15 other information required to be provided under the CCRAA and ICRAA.  
16 Further, on information and belief, Defendant did not contemporaneously or  
17 timely provide reports when requested.

### 18                                   **CLASS ACTION ALLEGATIONS**

19           28. Plaintiffs bring this lawsuit as a class action on behalf of themselves  
20 and all others similarly situated as members of the proposed Class pursuant to  
21 Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2). This action  
22 satisfies the numerosity, commonality, typicality, adequacy, predominance, and  
23 superiority requirements of those provisions.

24           29. Plaintiffs’ proposed class consists of and is defined as:

25                   All persons residing in the United States who applied  
26                   for an employment position with Defendant within the  
27                   two years immediately preceding the filing of this  
28                   lawsuit (“Class”).

28           30. Plaintiffs’ proposed California subclass of the FCRA Pre-

1 Authorization Class consists of and is defined as follows:

2 All persons residing in California, ,who applied for an  
3 employment position with Defendant within the two  
4 years immediately preceding the filing of this lawsuit  
5 (“CCRAA/ICRAA Subclass”).

6 31. Members of the Class and CCRAA/ ICRAA Subclass, as described  
7 above, will be referred to as “class members.” Excluded from the Class and  
8 CCRAA/ ICRAA Subclass are: (1) Defendant, any entity or division in which  
9 Defendant has a controlling interest, and their legal representatives, officers,  
10 directors, assigns, and successors; and (2) the Judge to whom this case is assigned  
11 and the Judge’s staff. Plaintiffs reserve the right to amend the above Class and  
12 CCRAA/ ICRAA Subclass and to add additional subclasses as appropriate based  
13 on investigation, discovery, and the specific theories of liability.

14 32. Numerosity: The class members are so numerous that joinder of all  
15 members would be unfeasible and impractical. The membership of the entire  
16 Class and CCRAA/ ICRAA Subclass is unknown to Plaintiffs at this time;  
17 however, the Class is estimated to be greater than one hundred (100) individuals  
18 and the identity of such membership is readily ascertainable by inspection of  
19 Defendant’s employment and/or hiring records. Consequently, it is reasonable to  
20 presume that the members of the Class are so numerous that joinder of all  
21 members is impracticable. The disposition of their claims in a class action will  
22 provide substantial benefits to the parties and the Court.

23 33. Commonality: There are common questions of law and fact as to  
24 class members that predominate over questions affecting only individual  
25 members, including, but not limited to:

- 26 (a) Whether it is Defendant’s standard procedure to provide a  
27 stand-alone written disclosure to applicants and employees  
28 before obtaining a credit or background report in compliance  
with the statutory mandates;

- (b) Whether it is Defendant's standard procedure to provide a written copy of the FCRA Summary of Rights in compliance with the statutory mandates;
- (c) Whether it is Defendant's standard procedure to provide applicants and employees a reasonable opportunity to obtain copies of their credit or background report in compliance with the statutory mandates;
- (d) Whether it is Defendant's standard procedure to provide applicants and employees with written copies of their credit or background in a timely manner in compliance with the statutory mandates;
- (e) Whether Defendant's failures to comply with the FCRA, CCRAA or ICRAA were willful or grossly negligent; and
- (f) The appropriate amount of statutory damages, attorneys' fees, and costs resulting from Defendant's violations of federal and California law.

34. Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they are similarly situated, and Plaintiffs' claims (or defenses, if any) are typical of all class members' as demonstrated herein.

35. Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they are similarly situated, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts, or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are and will be necessarily expended for the

1 prosecution of this action for the substantial benefit of each class member.

2       36. Predominance: Questions of law or fact common to the class  
3 members predominate over any questions affecting only individual members of  
4 the Class. The elements of the legal claims brought by Plaintiffs and the class  
5 members are capable of proof at trial through evidence that is common to the class  
6 rather than individual to its members.

7       37. Superiority: Plaintiffs and class members have all suffered and will  
8 continue to suffer harm and damages as a result of Defendant's unlawful and  
9 wrongful conduct. A class action is superior to other available methods for the  
10 fair and efficient adjudication of the controversy. Absent a class action, most  
11 class member would likely find the cost of litigating their claims prohibitively  
12 high and would therefore have no effective remedy at law. Because of the  
13 relatively small size of the individual class members' claims, it is likely that only a  
14 few class members could afford to seek legal redress for Defendant's misconduct.  
15 Absent a class action, class member will continue to incur harm and damages and  
16 Defendant's misconduct will continue without remedy. Class treatment of  
17 common questions of law and fact would also be a superior method to multiple  
18 individual actions or piecemeal litigation in that class treatment will conserve the  
19 resources of the courts and the litigants and will promote consistency and  
20 efficiency of adjudication.

21       38. The Class may also be certified because:

- 22           (a) the prosecution of separate actions by individual class  
23 members would create a risk of inconsistent or varying  
24 adjudication with respect to individual class members, which  
25 would establish incompatible standards of conduct for  
26 Defendant;
- 27           (b) the prosecution of separate actions by individual class  
28 members would create a risk of adjudications with respect to

them that would, as a practical matter, be dispositive of the interests of other class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

(c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

### FIRST CAUSE OF ACTION

#### Violation of the Fair Credit Reporting Act Sections 1681b(b)(2)(A) and 1681d(a).

39. Plaintiffs hereby incorporate by reference the allegations contained in this Complaint.

40. Defendant is a “person” as defined by Section 1681a(b) of the FCRA.

41. Plaintiffs and class members are “consumers” within the meaning Section 1681a(c) of the FCRA, because they are “individuals.”

42. Section 1681b(b)(2)(A) of the FCRA provides, in relevant part:

(b) Conditions for furnishing and using **consumer reports for employment purposes.**

...

(2) Disclosure to consumer

(A) In general

Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

(i) a *clear and conspicuous* disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure*, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

(Emphasis Added.)

43. Section 1681d(a) provides, in relevant part:

(a) Disclosure of fact of preparation

(a) A person may not procure or cause to be prepared an **investigative consumer report** on any consumer unless—

(1) it is *clearly and accurately disclosed* to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure

(A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and

(B) *includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title;* (Emphasis Added.)

44. As discussed more fully above, Defendant violated Section 1681b(b)(2)(A) of the FCRA by failing to provide Plaintiffs and class members with a clear and conspicuous written disclosure, before a consumer report is procured or caused to be procured, that a consumer report may be obtained for employment purposes, in a document that consists solely of the disclosure.

45. Based upon the facts likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, Defendant has a policy and practice of failing to provide adequate written disclosures to applicants and employees, before procuring consumer reports or causing consumer reports to be procured. Pursuant to that policy and practice, Defendant procured consumer reports or caused consumer reports to be procured for Plaintiffs and class members without first providing a written disclosure in compliance with Section 1681b(b)(2)(A) of the FCRA.

46. Defendant's conduct in violation of Section 1681b(b)(2)(A) of the FCRA was and is willful. Defendant acted in deliberate or reckless disregard of



1 its obligations and the rights of applicants and employees, including Plaintiff and  
2 class members. Defendant's willful conduct is reflected by, among other things,  
3 the following facts:

- 4 (a) Defendant is a large corporation with access to legal advice  
5 through its own general counsel's office and outside  
6 employment counsel;
- 7 (b) Defendant included a purported authorization to perform credit  
8 and background checks in its employment application which,  
9 although defective, evidences Defendant's awareness of and  
10 willful failure to follow the governing laws concerning such  
11 authorizations;
- 12 (c) The plain language of the statute unambiguously indicates that  
13 inclusion of a liability release in a disclosure form violates the  
14 disclosure and authorization requirements; and
- 15 (d) The FTC's express statements, pre-dating Defendant's  
16 conduct, which state that it is a violation of Section  
17 1681b(b)(2)(A) of the FCRA to include a liability waiver in the  
18 FCRA disclosure form.

19 47. Defendant violated section 1681d(a)(1) of the FCRA by failing  
20 clearly and accurately disclose that an investigative consumer report may be  
21 made; failing to include a statement informing Plaintiffs and class members that  
22 such a report involves personal interviews with sources such as neighbors, friends,  
23 or associates; failing to inform them of their right to request the additional  
24 disclosures provided for under 1681d(b); and failing to provide a written summary  
25 of Plaintiffs' and class members' rights under 1681g(c) as part of the disclosure.

26 48. On information and belief and based upon the facts likely to have  
27 evidentiary support after a reasonable opportunity for further investigation and  
28 discovery, Defendant has a policy and practice of procuring investigative

1 consumer reports or causing investigative consumer reports to be procured for  
2 applicants and employees without providing a written summary of their rights  
3 under the FCRA at the same time as the disclosure explaining that an investigative  
4 consumer report may be made. Pursuant to that policy and practice, Defendant  
5 procured investigative consumer reports or caused investigative consumer reports  
6 to be procured for Plaintiffs and class members, without providing a timely  
7 written summary of their rights under the FCRA.

8 49. Accordingly, Defendant willfully violated and continues to violate  
9 the FCRA including, but not limited to, Sections 1681b(b)(2)(A) and 1681d(a).  
10 Defendant's willful conduct is reflected by, among other things, the facts set forth  
11 above.

12 50. As a result of Defendant's illegal procurement of credit and  
13 background reports by way of its inadequate disclosures, as set forth above,  
14 Plaintiffs and class members have been injured including, but not limited to,  
15 having their privacy and statutory rights invaded in violation of the FCRA.

16 51. Plaintiffs, on behalf of themselves and all class members, seek all  
17 available remedies pursuant to 15 U.S.C. Section 1681n, including statutory  
18 damages and/or actual damages, punitive damages, injunctive and equitable relief,  
19 and attorneys' fees and costs.

20 52. In the alternative to Plaintiffs' allegation that these violations were  
21 willful, Plaintiffs allege that the violations were negligent and seek the appropriate  
22 remedy, if any, under 15 U.S.C. Section 1681o.

## 23 **SECOND CAUSE OF ACTION**

### 24 **Violation of the Consumer Credit Reporting Agencies Act Section** 25 **1785.20.5(a).**

26 53. Plaintiffs hereby incorporate by reference the allegations contained in  
27 this Complaint.

28 54. Defendant is a "person" as defined by Cal. Civ. Code Section

1 1785.3(j).

2 55. Plaintiffs and class members are consumers within the meaning of  
3 Cal. Civ. Code Section 1785.3(b), because they are “natural individuals.”

4 56. Section 1785.3(c) of the CCRAA defines “consumer credit report” as  
5 any written, oral, or other communication of any information by a consumer credit  
6 reporting agency bearing on a consumer's credit worthiness, credit standing, or  
7 credit capacity, which is used or is expected to be used, or collected in whole or in  
8 part, for the purpose of serving as a factor in establishing the consumer’s  
9 eligibility for employment purposes.

10 57. Section 1785.3(d) of the CCRAA defines “consumer credit reporting  
11 agency” as “any person who, for monetary fees, dues, or on a cooperative  
12 nonprofit basis, regularly engages in whole or in part in the business of assembling  
13 or evaluating consumer credit information or other information on consumers for  
14 the purpose of furnishing consumer credit reports to third parties, but does not  
15 include any governmental agency whose records are maintained primarily for  
16 traffic safety, law enforcement, or licensing purposes.”

17 58. Section 1785.3(f) of the CCRAA defines “employment purposes,”  
18 when used in connection with a consumer credit report, as “a report used for the  
19 purpose of evaluating a consumer for employment, promotion, reassignment, or  
20 retention as an employee.”

21 59. Section 1785.20.5(a) of the CCRAA requires that prior to requesting  
22 a consumer credit report for employment purposes, the user of the report shall  
23 provide written notice that (1) identifies the specific basis under subdivision (a) of  
24 Section 1024.5 of the Labor Code for use of the report; (2) informs the person of  
25 the source of the report; and (3) contains a box that the person may check off to  
26 receive a copy of the credit report. The employer must provide the report to the  
27 applicant or employee contemporaneously and at no charge.

28 60. At all relevant times herein, Defendant willfully violated Section

1 1785.20.5(a) of the CCRAA as to Plaintiffs and class members because it failed to  
2 provide written notice to Plaintiffs and class members that includes a check box  
3 that would allow Plaintiffs and class members to opt to receive a copy of their  
4 consumer credit report. Defendants also willfully violated section 1785.20.5(a) by  
5 failing to include the source of the credit report in a written notice to Plaintiffs and  
6 class members and failing to state a specific basis for obtaining the credit report as  
7 indicated under Labor Code section 1024.5.

8 61. On information and belief and based upon the facts likely to have  
9 evidentiary support after a reasonable opportunity for further investigation and  
10 discovery, Defendant had and has a policy and practice of failing to provide notice  
11 that (1) identifies the specific basis for use of the report; (2) informs the person of  
12 the source of the report; and (3) includes a check box that would allow applicants  
13 and employees to choose to receive a copy of their consumer credit report.  
14 Pursuant to that policy and practice, Defendant willfully violated Section  
15 1785.20.5(a) of the CCRAA as to Plaintiffs and class members.

16 62. Accordingly, Defendant willfully violated and continues to violate  
17 the CCRAA including, but not limited to Section 1785.20.5(a), and has violated  
18 the privacy rights of Plaintiffs and class members. Defendant's willful conduct is  
19 reflected by, among other things, the facts set forth above.

20 63. As a result of Defendant's willful conduct as set forth above,  
21 Plaintiffs and class members have been injured including, but not limited to,  
22 having their privacy and statutory rights invaded in violation of the CCRAA.

23 64. Plaintiffs, on behalf of themselves and all class members, seek all  
24 available remedies pursuant to Cal. Civ. Code Sections 1785.31 including  
25 statutory damages and/or actual damages, punitive damages, injunctive and  
26 equitable relief, and attorneys' fees and costs.

27 65. In the alternative to Plaintiffs' allegation that these violations were  
28 willful, Plaintiffs allege that the violations were negligent and seek the appropriate

1 remedy, if any, under Cal. Civ. Code Section 1785.31.

2 **THIRD CAUSE OF ACTION**

3 **Violation of the Investigative Consumer Reporting Agencies Act Section**  
4 **1786.16(b).**

5 66. Plaintiffs hereby incorporate by reference the allegations contained in  
6 this Complaint.

7 67. Defendant is a “person” as defined by Cal. Civ. Code Section  
8 1786.2(a).

9 68. Plaintiffs and class members are consumers within the meaning Cal.  
10 Civ. Code Section 1786.2(b), because they are natural individuals who have made  
11 application to a person for employment purposes.

12 69. Section 1786.2(c) of the ICRAA defines “investigative consumer  
13 report” as “a consumer report in which information on a consumer's character,  
14 general reputation, personal characteristics, or mode of living is obtained through  
15 any means.”

16 70. Section 1786.2(d) of the ICRAA defines “investigative consumer  
17 reporting agency” as “any person who, for monetary fees or dues, engages in  
18 whole or in part in the practice of collecting, assembling, evaluating, compiling,  
19 reporting, transmitting, transferring, or communicating information concerning  
20 consumers for the purposes of furnishing investigative consumer reports to third  
21 parties, but does not include any governmental agency whose records are  
22 maintained primarily for traffic safety, law enforcement, or licensing purposes, or  
23 any licensed insurance agent, insurance broker, or solicitor, insurer, or life  
24 insurance agent.”

25 71. Section 1786.16(a)(2)(B) provides, in relevant part:

26 (B) The person procuring or causing the report to be made provides a clear  
27 and conspicuous disclosure in writing to the consumer at any time before  
28 the report is procured or caused to be made in a document that consists  
solely of the disclosure, that:

(i) An investigative consumer report may be obtained.

(ii) The permissible purpose of the report is identified.

(iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.

(iv) ***Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.***

(v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.

(vi) ***Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (iv), or, if the agency has no Internet Web site address, the telephone number of the agency,*** where the consumer may find information about the investigative reporting agency's privacy practices . . . . (Emphasis Added.)

72. Defendant violated Section 1786.16(a)(2)(B) of the ICRAA by failing to include the name, address, phone number, and website for the investigative consumer reporting agency conducting the investigation for the consumer report.

73. Section 1786.16(b)(1) provides, in relevant part:

(b) Any person described in subdivision (d) of Section 1786.12 who requests an investigative consumer report, in accordance with subdivision (a) regarding that consumer, shall do the following:

***(1) Provide the consumer a means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report*** that is prepared. If the consumer wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the consumer within three business days of the date that the report is provided to the recipient, who may contract with any other entity to send a copy to the consumer. The notice to request the report may be contained on either the disclosure form, as required by subdivision (a), or a separate consent form. The copy of the report shall contain the name, address, and telephone number of the person who issued the report and how to contact them. (Emphasis Added.)

74. Defendant violated Section 1786.16(b)(1) by failing to provide to Plaintiffs and class members a written form, by means of a box to check, to indicate their desire to receive a copy of their investigative consumer report requested by Defendant.



1           75. On information and belief, and based upon the facts likely to have  
2 evidentiary support after a reasonable opportunity for further investigation and  
3 discovery, Defendant had and has a policy and practice of procuring investigative  
4 consumer reports or causing investigative consumer reports to be procured for  
5 applicants and employees without providing them a way to indicate on a written  
6 form, by means of a box to check, that they wish to receive a copy of any report  
7 that is prepared. Pursuant to Defendant's policy and practice, Defendant procured  
8 investigative consumer reports or caused investigative consumer reports to be  
9 procured for Plaintiffs and class members without providing them with the means  
10 required under Section 1786.16(b)(1) of the ICRAA to indicate that they would  
11 like to receive a copy of their report(s).

12           76. Accordingly, Defendant willfully violated and continues to violate  
13 the ICRAA including, but not limited to Sections 1786.16(a)(2)(B) and  
14 1786.16(b)(1). Defendant's willful or grossly negligent conduct is reflected by,  
15 among other things, the facts set forth above.

16           77. As a result of Defendant's willful or grossly negligent failure to  
17 provide the required form and/or report(s) as set forth above, Plaintiffs and class  
18 members have been injured including, but not limited to, having their privacy and  
19 statutory rights invaded in violation of the ICRAA.

20           78. Plaintiffs, on behalf of themselves and all class members, seek all  
21 available remedies pursuant to Cal. Civ. Code Section 1786.50 including actual  
22 damages, punitive damages, injunctive and equitable relief, and attorneys' fees  
23 and costs.

#### 24                                   **REQUEST FOR JURY TRIAL**

25           79. Plaintiffs request a trial by jury of all issues which may be tried by a  
26 jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### 27                                   **RELIEF REQUESTED**

28           Plaintiffs, on behalf of themselves and class members, request that the

1 Court enter judgment against Defendant, as follows:

- 2 (a) An order certifying the proposed Classes and Subclasses,  
3 designating Plaintiffs as named representatives of the Class  
4 and Subclass, and designating the undersigned as Class  
5 Counsel;
- 6 (b) A Declaration that Defendant's practices violate the FCRA,  
7 CCRAA, and ICRAA;
- 8 (c) An award of statutory, compensatory, special, general, and  
9 punitive damages according to proof against all Defendants;
- 10 (d) An award of appropriate equitable relief, including but not  
11 limited to an injunction forbidding Defendant from engaging  
12 in further unlawful conduct in violation of the FCRA,  
13 CCRAA, and ICRAA;
- 14 (e) An award of pre-judgment and post-judgment interest, as  
15 provided by law;
- 16 (f) Leave to amend the Complaint to conform to the evidence  
17 produced at trial;
- 18 (g) An award of attorneys' fees and costs, as allowed by law,  
19 including an award of attorneys' fees and costs pursuant to 15  
20 U.S.C. § 1681n, 15 U.S.C. 1681o, California Civil Code, §§  
21 1785.31(a) and 1786.50, and California Code of Civil  
22 Procedure § 1021.5; and

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1 (h) Such other relief as may be appropriate under the  
2 circumstances.

3 Dated: March 21, 2014

Respectfully submitted,

4 Capstone Law APC

5  
6 By: /s/ Mark S. Greenstone

7 Jordan L. Lurie

8 Mark S. Greenstone

9 Tarek H. Zohdy

10 Cody R. Padgett

11 Attorneys for Plaintiffs Franchesca Ford  
12 and Isabel Rodriguez  
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